

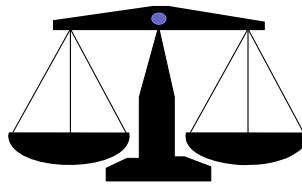
**A SUMMARY OF SELECTED BILLS**

**TRULY AGREED TO AND FINALLY PASSED**

**By The**

**95th General Assembly**

**First Regular Session**



**Prepared By**

**Office of State Courts Administrator**

**July 2009**

## **TABLE OF CONTENTS**

	<u>Page</u>
Senate Bills and House Bills Listed by Bill Number .....	i
Introduction .....	1
Bill Summaries .....	2

## SENATE BILLS

<u>Bill Number</u>	<u>Title</u>	<u>Page</u>
SB 1	PRENEED CONTRACTS.....	2
SB 26	ALCOHOLIC BEVERAGE VAPORIZER .....	2
SB 36	SEXUAL OFFENSES AGAINST CHILDREN.....	2
SB 37	PUBLIC DEFENDER SYSTEM.....	2
SB 44	PRIVATE JAILS.....	3
SB 140	FATHERING COURTS.....	4
SB 141	PATERNITY .....	5
SB 196	PUBLIC WATER SUPPLY DISTRICT.....	6
SB 355	ADMINISTRATIVE FEES .....	6
SB 368	AFFIRMATIVE DEFENSE.....	6
SB 435	SEXUALLY VIOLENT PREDATORS .....	6

## HOUSE BILLS

<u>Bill Number</u>	<u>Title</u>	<u>Page</u>
HB 62	OMNIBUS CRIME BILL.....	7
HB 103	PUBLIC SAFETY .....	11
HB 132	SALE OF LIQUOR .....	12
HB 152	DNA PROFILING SYSTEM.....	13
HB 154	CHILD PLACEMENT AND FOSTER CARE .....	13
HB 171	LANDLORD-TENANT .....	14
HB 177	COURT RECORDS.....	15
HB 205	FIRE SAFETY STANDARD AND FIRE PROTECTION ACT .....	15
HB 237	COURTS .....	15
HB 239	MANAGEMENT OF TRUSTS AND FUNDS .....	15
HB 273	ESTATE DISBURSEMENT .....	16
HB 481	COURTS AND JUDICIAL PROCEEDINGS .....	16
HB 652	CERTIFIED MAIL .....	19
HB 683	TRANSPORTATION .....	20
HB 747	SEXUAL CONTACT WITH A PRISONER.....	22
HB 826	SEXUALLY VIOLENT PREDATORS .....	22
HB 863	CHILD WITNESS PROTECTION ACT.....	22
HB 914	DIRECTOR OF THE DIVISION OF FINANCE .....	23
HCR 5	MISSOURI CITIZENS' COMMISSION ON COMPENSATION .....	23

## INTRODUCTION

In the role of interpreting the statutes of Missouri, judges have a potential interest in almost any bill enacted. However, for this synopsis certain bills have been selected which appear to have a direct impact on the workload or procedures of the courts, or which appear likely to come to the attention of the courts within a short time. Some bills, which may provide for specific types of cases which are expected to be of low volume and therefore not of general interest, have not been included in this summary.

The individual summaries cover the major points of the bills or those sections that affect the courts, but they do not address every issue in each bill and should not be read as a substitute for reading the bill in the context of the entire chapter in the statutes.

Because of the disparate provisions in many of the bills, they have not been arranged by subject matter, but in numerical order. A table of contents is provided at the front of this document.

**All of the bills included have been truly agreed to and finally passed; however, not all bills have been signed into law by the Governor.** Bills become effective August 28, 2009 unless otherwise indicated. We have indicated the date signed on those bills with an emergency clause.

A link to each bill has been provided in the document. For a copy of any bill, please direct your request to:

Senate Bill Room  
State Capitol  
Jefferson City, Missouri 65101

House Post Office  
State Capitol  
Jefferson City, Missouri 65101

Staff of the Office of State Courts Administrator are willing to assist you in obtaining further information about any of the legislation.

## SENATE BILLS

### **HCS SS SCS SB 1 PRENEED CONTRACTS**

This act enumerates provisions required to be included in all preneed contracts.

The grounds for denial, suspension, and revocation of licenses and registrations are made the same for embalmers, funeral directors, preneed sellers, preneed providers, and preneed agents. Individuals whose license or registration is revoked shall wait three years to reapply. The board may enjoin sellers from engaging in preneed sales when the seller has failed to make deposits into the trust, obtained funds out of the trust to which the seller is not entitled, or caused any other shortage in any trust fund or joint account which exceeds 20% of the total required to be held or deposited in trust. §333.330, RSMo

*Summary provided by Senate Research*

### **CCR HCS SB 26 ALCOHOLIC BEVERAGE VAPORIZER**

This act prohibits any person from possessing or using an alcoholic beverage vaporizer. Such a vaporizer is defined as "any device which, by means of heat, a vibrating element, or any other method, is capable of producing a breathable mixture containing one or more alcoholic beverages to be dispensed for inhalation into the lungs via the nose or mouth or both." A violation of these provisions is a class B misdemeanor. §578.255, RSMo

### **HCS SCS SB 36 & 112 SEXUAL OFFENSES AGAINST CHILDREN**

Changes the penalty for forcible rape or sodomy of a child under the age of twelve from life imprisonment without eligibility for probation or parole until the person has served thirty years to life imprisonment without ever being eligible for probation, parole, or conditional release, if such forcible rape or sodomy of a child is outrageously or wantonly vile, horrible, or inhuman in that it involved torture or depravity of mind. §566.030 and 566.060, RSMo

### **SCS SB 37 PUBLIC DEFENDER SYSTEM**

This act modifies various provisions relating to the Public Defender System. Adds an assistant public defender with at least one year of experience to the Public Defender Commission. The commission shall establish maximum public defender caseload standards in order to fulfill the constitutional obligation to provide effective counsel and comply with the rules of professional conduct. The director of the system shall be the employer of the Public Defender System employees rather than the commission and the employees shall serve at the pleasure of the director rather than the local public defender. Public defenders shall no longer have a term of four years. The commission may authorize the director to contract with private attorneys. Funds applied for and accepted on behalf of the Public Defender System, which are available through government grants or any other source, shall be deposited into the Legal Defense and Defender Fund, rather than the general revenue fund.

The director shall also ensure that public defender caseloads remain within the maximum defender caseloads established by the commission. Where the number of cases exceeds the maximum caseload, the director shall contract the excess cases to private counsel when funds are available. If funds are not available, the director shall notify the court that the public defender is unavailable. Persons eligible for public defender services shall then be placed on a waiting list for services, and the court shall proceed as provided in this section. Currently, indigent persons are eligible for public defender services when detained or charged with a misdemeanor which will likely result in confinement. Under this section, such person shall only be eligible when the prosecuting attorney has requested a jail sentence for such misdemeanor.

When the public defender is unavailable to accept additional cases because maximum caseload standards have been met, the court and the public defender shall proceed in the following manner: 1) The public defender shall continue to make indigency determinations and inform the court of the status of defendants requesting services; 2) If, after consulting with the prosecutor, the court determines a case can be disposed of without a jail or prison sentence, the court may proceed without the provision of counsel to the defendant; 3) If a jail or prison sentence remains possible, the court shall place the case on a waiting list for defender services; and 4) The court shall

determine the order in which cases will be placed on its waiting list for services. The commission and Supreme Court may make rules and regulations regarding these provisions in order to ensure the defendant's constitutional right to effective assistance of counsel is met. Nothing in this section shall prevent the court from using non-public defender resources to obtain counsel for a defendant on the waiting list or from making pro bono appointments. Private counsel may seek payment of litigation expenses from the public defender system for such services, but such expenses shall not include counsel fees and shall be limited to the expenses approved in advance by the director.

Currently, a balance of not more than \$150,000 shall remain in the Legal Defense and Defender Fund at the end of the appropriation period and not be transferred to the general revenue fund. Under this section, the amount is increased to an amount equal to 20% of the current annual fund appropriation. §600.011, 600.015, 600.017, 600.021, 600.040, 600.042, 600.045, 600.086, 600.090, and 600.096, RSMo

*Summary provided by Senate Research*

### **CCS#2 HCS SCS SB 44 PRIVATE JAILS**

This act creates new requirements for private jails. Private jails are facilities not owned or operated by the state, a county, or a municipality that confine or detain prisoners who are awaiting trial, awaiting sentencing, or serving a sentence in jail. Such private jails shall be subject to all applicable state laws and local ordinances.

Any written report regarding a state criminal law violation that would result in a punishment of at least one year in prison shall contain the name and address of the private jail, the name of the prisoner or person who may have committed the violation, information regarding the violation, the name of the complainant, and other relevant information. The administrator shall, in a timely manner, refer all reports to law enforcement having jurisdiction. The administrator and employees shall cooperate in the investigation of the facts alleged in the report insofar as is consistent with the constitutional rights of all parties involved.

In the event that a prisoner is missing, the private jail shall take prompt and reasonable action to discover where the prisoner has escaped. Upon learning such an escape has occurred, the private jail shall promptly notify law enforcement and provide them with all available information known about the escape and the escapee. Any person who makes a report, or who testifies in an administrative or judicial proceeding arising from the report, shall be immune from any civil or criminal liability for making such a report or for testifying, unless the person acted with malice.

Persons confined in private jails shall be separated and confined by gender. Persons confined under civil process or for civil causes shall be kept separate from people confined regarding criminal matters. The administrator shall arrange for necessary health care services and provide adequate clothing, food, and bedding, for those persons confined in the private jail. Deprivation of such items shall not be used as a disciplinary action against a confined person. No person confined in a private jail shall be used in any manner for the profit, betterment, or personal gain of any county or private jail employee. Any law enforcement investigation of a report regarding necessary health care or use of a confined person for profit or gain shall be concluded in a timely manner and a written report shall be provided to the private jail.

Nothing in the above provisions shall create a new civil cause of section.

The state or its political subdivisions shall not contract with any private jail to provide services, unless such jail provides written documentation of its ability to indemnify for liability arising from the operation of the jail.

Currently, a person is prohibited from bringing certain items, including controlled substances, alcohol, items prohibited by law or rule, and weapons into a county jail. The punishment for such crime varies from a class A misdemeanor to a class C felony, depending on the item brought into the jail. Under this act, a person is prohibited from bringing such items into a private jail as well. The administrator of a private jail may deny visitation privileges to or refer to the county prosecutor any person who knowingly brings, or tries to bring, items into the jail which are prohibited by the jail's rules and regulations. Violation of this provision shall be an infraction if it is not covered by other statutes.

Currently, a person commits the crime of damage to jail property if such person: 1) knowingly damages a city or county jail building or property, or 2) knowingly starts a fire in a city or county jail. Such crime is a class D felony. Under this act, damaging property at a private jail shall have the same criminal penalty.

This act requires private jailers to check for outstanding warrants through MULES before releasing an individual, in the same manner as county jailers. If an outstanding charge or warrant exists, the private jail administrator must tell the appropriate agency and transfer the individual accordingly. If a private jail administrator purposefully fails to perform a warrant check with the intent to release the person, he or she is guilty of a class A misdemeanor. An administrator shall not be liable for failing to perform a warrant check if the MULES system is not accessible.

Currently, escaping or attempting to escape from a county or city jail is a class D felony, unless certain aggravating circumstances apply, in which case, the penalty is increased. Under this act, escaping from a private jail shall have the same criminal penalty.

Currently, if a person is serving a sentence in a county jail on conviction of a felony, and he or she fails to return to confinement as required under a work-release program, while serving a sentence with a term that is not continuous, or under another type of sentence where he or she is temporarily permitted to go at without a guard, he or she is guilty of a class A misdemeanor. Under this act, failing to return to confinement to a private jail shall have the same criminal penalty.

Currently, a public servant with charge of a prisoner, who knowingly permits him or her to escape, is guilty of a class D felony, unless the public servant allows the prisoner to have a deadly weapon or dangerous instrument, in which case, the crime is a class B felony. Under this act, knowingly permitting escape from a private jail shall have the same criminal penalty. §221.095, 221.097, 221.111, 221.353, 221.510, 575.210, 575.220, and 575.240, RSMo

*Summary provided by Senate Research*

## **SCS SB 140 FATHERING COURTS**

Under this act, courts disposing of criminal nonsupport cases may be established by any circuit court. Such court shall have the authority to refer defendants to education, vocational or employment training, substance abuse treatment, or work programs. After successful completion of a court-ordered treatment or training program or commencement of support payments, the defendant may have the charges, petition, or penalty against him or her dismissed, reduced, or modified.

Each circuit shall establish conditions for referral to the court, and each participant must be a nonviolent person. Any proceeding accepted by the court must be upon agreement of the parties. Any of the program's staff reports shall not be admissible as evidence in the underlying case; however, termination from the court program may be considered in sentencing or disposition of the case. Court staff shall be provided access to government records relevant to the participant's supervision.

A ten-member Criminal Nonsupport Courts Coordinating Commission shall be established to coordinate and allocate resources made available through the newly created Criminal Nonsupport Court Resources Fund. The Criminal Nonsupport Courts Coordinating Commission shall consist of one member selected by the director of the Department of Corrections; one member selected by the director of the Department of Social Services; one member selected by the director of the Department of Education; one member selected by the director of the Department of Public Safety; one member selected by the State Courts Administrator; one member selected by the director of the Department of Labor and Industrial Relations; three members selected by the Missouri Supreme Court, one being a criminal defense attorney; and one member who is a prosecuting attorney selected by the Office of Prosecution Services. The Missouri Supreme Court shall designate the chair of the commission. The commission shall periodically meet at the call of the chair; evaluate resources available for assessment and training of persons assigned to criminal nonsupport courts or for operation of criminal nonsupport courts; secure grants, funds, and other property and services necessary or desirable to facilitate criminal nonsupport court operation; and allocate such resources among the various criminal nonsupport courts operating within the state.

Under this act, criminal nonsupport shall be a class A misdemeanor unless the total arrearage is in excess of an aggregate of twelve monthly payments, in which case, it is a class D felony. Currently, the crime is a class D felony if the person owes more than \$5,000 or has failed to pay six months of payments within the last twelve-month period.

The crime of nonsupport shall apply whether a child's paternity has been established through an administrative order or judicial order. Inability to provide support for good cause shall be an affirmative defense that must be proved by a preponderance of the evidence.

If the defendant is placed on probation or parole, he or she may be ordered to begin payment of current support as well as satisfy the arrearages. If he or she fails to pay, probation or parole may be revoked and an appropriate sentence shall be imposed.

During any period that a nonviolent defendant is incarcerated for criminal nonsupport, the court, if the defendant is ready, willing, and able to be gainfully employed, may place the defendant on work release in order to satisfy the defendant's obligation to pay support if the person meets the criteria established by the Department of Corrections. The arrearages shall be satisfied as outlined in the collection agreement.

Beginning August 28, 2009, every nonviolent first and second-time offender currently incarcerated for criminal nonsupport, previously not placed on probation or parole, may be considered for parole or work release. §478.495 and 568.040, RSMo

*Summary provided by Senate Research*

### **SS SCS SB 141 PATERNITY**

This act modifies provisions relating to paternity determinations.

In an action to determine paternity of a child, a notification form shall be attached to the delivery of the petition through service of process. The notification form shall prominently state in bold face type as follows: "Important Notice. If you do not respond to this action, a judgment of paternity may be entered against you and you may be ordered to pay child support, medical support or reimburse someone for support previously paid for the child. You have the right to contest that you are the father of the named child and you have the right to request genetic testing to prove whether or not you are the father."

This act also provides that a petitioner may file a petition to challenge entry of a judgment of paternity and support upon filing an affidavit stating that evidence exists which was not considered before entry of judgment. Such petition shall also include either an allegation that genetic testing was conducted within the past 90 days using DNA methodology, was performed by an expert, and that the test results indicate the petitioner is not the child's father or a request to the court for an order of genetic paternity testing using DNA methodology. The petition to set aside the judgment may be filed at any time prior to December 31, 2011. After that, the petition shall be filed within two years of the entry of the original judgment of paternity and/or support, whichever occurs later.

The court, after a hearing where all interested parties have been given an opportunity to present evidence and be heard and upon a finding of probable cause to believe the testing may result in a determination of non-paternity, shall order the relevant parties to submit to genetic paternity testing. The petitioner shall pay for the costs of testing.

The court shall grant relief, unless the court makes written findings of fact and conclusions of law that it is not in the best interest of the parties to do so, and enter judgment setting aside the previous judgment of paternity and child support, including a previous acknowledgment of paternity; extinguish any existing child support arrearage; and order the Department of Health and Senior Services to modify the child's birth certificate accordingly upon a finding that the genetic test was properly conducted, accurate, and excludes the petitioner as the child's father.

In addition, any petitioner may apply for expungement of criminal nonsupport records to the court in which the petitioner pled guilty or was sentenced. Such expungement shall only apply to records for criminal nonsupport of a child or children for which the petitioner was found not to be the biological father.

The provisions of this act shall not apply to grant relief to the parent of any adopted child nor shall such provisions be construed to create a cause of action to recover child support or state debt previously paid under court order. The petitioner shall not have a right for reimbursement of any monies paid previously under said order.

Beginning in 2010, the family support division shall track and report to the general assembly the number of cases known to the division in which a court, within the calendar year, sets aside a previous judgment of paternity and support under the provisions of this act. §210.826, 210.828 and 210.854, RSMo

*Summary provided by Senate Research*

#### **HCS SB 196 PUBLIC WATER SUPPLY DISTRICT**

The act modifies provisions relating to the procedure for detaching territory from a public water supply district. When a petition for detachment is submitted to the circuit court by someone other than the district's board of directors, the district shall be named as a defendant and a copy of the petition shall be served upon the district by certified or registered mail at least 35 days before the hearing. §247.031, RSMo

#### **SCS SB 355 ADMINISTRATIVE FEES**

Allows motor vehicle dealers, boat dealers, and powersport dealers to charge administrative fees associated with the sale or lease of certain vehicles and vessels under certain conditions. The act provides that if a court determines that the charging of an administrative fee constitutes the unauthorized practice of law, then no person who paid that administrative fee may recover the fee or treble damages, and the dealer who charged that fee shall not be guilty of a misdemeanor, as provided by Missouri's unauthorized practice of law statute. §301.558, RSMo

#### **SB 368 AFFIRMATIVE DEFENSE**

Provides that a person operating a motorcycle or bicycle who enters or crosses an intersection controlled by a traffic-control signal against a red light shall have an affirmative defense to that charge if the person establishes all of the following conditions:

- (1) The motorcycle or bicycle has been brought to a complete stop;
- (2) The traffic signal continues to show a red light for an unreasonable time;
- (3) The traffic signal is apparently malfunctioning or, if programmed or engineered to change to a green light only after detecting the approach of a motor vehicle, the signal has apparently failed to detect the arrival of the motorcycle; and
- (4) No motor vehicle or person is approaching on the street or highway to be crossed or entered or is so far away from the intersection that it does not constitute an immediate hazard.

The affirmative defense applies only to a violation for entering or crossing an intersection controlled by a traffic-control signal against a red light, and does not provide a defense to any other civil or criminal action. §304.285, RSMo

*Summary provided by Senate Research*

#### **CCS HCS SB 435 SEXUALLY VIOLENT PREDATORS**

The Department of Mental Health is authorized to enter into a contract agreement with one or more county jails for the confinement of sexually violent predators. Such persons confined in a county jail shall be housed separately from other offenders. This act also allows the Department of Mental Health to detain persons, after a probable cause hearing, at a county jail prior to their commitment to the Department of Mental Health as sexually violent predators.

This act allows the Division of Developmental Disabilities to contract directly with providers of targeted case management services for clients of the division in a defined region that has not established a Senate Bill 40 board. §630.110, 630.407, 632.489 and 632.495 RSMo

*Summary provided by Senate Research*

## HOUSE BILLS

### **CCS SS SCS HCS HB 62 OMNIBUS CRIME BILL**

This bill changes the laws regarding crime. In its main provisions, the bill:

- (1) Defines "unique biometric identification" as automated methods of recognizing and identifying an individual based on a physiological characteristic including, but not limited to, facial recognition, fingerprints, palm prints, hand geometry, iris recognition, and retinal scan, and requires a law enforcement agency to capture that identification from a person at the time of his or her arrest if it is financially feasible for the agency to do so and to forward the information to the central repository of the State Highway Patrol (Sections 43.500 and 43.503, RSMo);
- (2) Prohibits law enforcement agencies from fingerprinting a juvenile older than 15 years and six months of age who is alleged to have violated a traffic ordinance unless the juvenile is certified as an adult, and requires law enforcement agencies to forward a photograph and certification papers to the central repository in cases where the juvenile has been certified as an adult (Section 43.503.3);
- (3) Requires the municipal prosecuting attorney to notify the central repository of his or her decision not to file criminal charges on any charge referred to him or her or to the circuit attorney (Section 43.503.5);
- (4) Requires municipal court clerks to furnish the central repository with a record of all charges filed in cases where the central repository has an arrest record or fingerprint and expands the list of crimes that are reportable to the central repository (Sections 43.503.6 and 43.506);
- (5) Specifies that a person who knowingly uses or attempts to use a false or misleading degree from any institution of higher education or a degree from any institution of higher education in a false or misleading manner, in connection with admission to any institution of higher education or with any business, employment, occupation, profession, trade, or public office will be guilty of a class C misdemeanor (Section 173.754);
- (6) Allows state college and university police officers to respond to emergencies or natural disasters outside the boundaries of college or university property and provide services if requested by the law enforcement agency with jurisdiction (Section 174.700);
- (7) Requires the Department of Health and Senior Services to implement an education and awareness program regarding the financial exploitation of the elderly (Section 192.925);
- (8) Requires a photograph to be taken of an incarcerated individual prior to release and made available to the crime victim upon his or her request (Section 217.439);
- (9) Specifies that a detainer will not be lodged against any person confined in a correctional facility until the Director of the Department of Corrections receives a certified copy of a warrant and a written request by the issuing agency to place the detainer. Failure of the director to comply will not be the basis for dismissing the indictment, information, or complaint unless the court also finds that the offender has been denied the constitutional right to a speedy trial (Sections 217.450 and 217.460);
- (10) Requires the Governor to designate one member of the Board of Probation and Parole as the vice-chairman (Section 217.665);
- (11) Specifies that it will be an absolute defense to criminal prosecution or civil liability for the killing or injuring of a dog if the person was in reasonable apprehension of imminent harmful contact by the dog or was acting to prevent the imminent harmful contact against another person or under certain specified conditions if the person has complained about the dog to the appropriate authority on at least two occasions (Section 273.033);

(12) Specifies that the owner or possessor of a dog that bites, without provocation, any person on public property or lawfully on private property or any dog that causes property or livestock damage will be strictly liable for any damages suffered by the bitten person or any damage to property or livestock and must pay a fine of up to \$1,000 (Section 273.036);

(13) Specifies that any person convicted of two intoxication-related traffic offenses within a five-year period will be denied all driving privileges (Section 302.060);

(14) Specifies that any person who knowingly or intentionally produces, manufactures, sells, or otherwise distributes a fraudulent document intended to serve as a motor vehicle insurance identification card will be guilty of a class D felony and any person who knowingly or intentionally possesses a fraudulent card will be guilty of a class B misdemeanor (Section 303.024);

(15) Specifies that any person 21 years of age or younger who operates a moving motor vehicle while sending, reading, or writing a text or electronic message by means of a hand-held electronic wireless communications device will be guilty of an infraction (Section 304.820);

(16) Specifies that any person who possesses or uses a beer bong or other drinking device used to consume similar amounts of alcohol or any large volume alcohol container holding more than four gallons of an alcoholic beverage on any river of this state or who possesses an expanded polypropylene cooler on or within 50 feet of any river in this state except in specified areas will be guilty of a class A misdemeanor. This section does not apply to the Mississippi, Missouri, or Osage rivers (Section 306.109);

(17) Specifies that any person younger than 21 years of age who purchases, attempts to purchase, or has in his or her possession any intoxicating liquor or who is visibly in an intoxicated condition will be deemed to have given consent to a chemical test or tests of the person's breath, blood, saliva, or urine for the purpose of determining the alcohol or drug content of the person's blood (Section 311.325);

(18) Allows a person to expunge an alcohol-related offense from his or her record one year after turning 21 years of age if the person has not been convicted of any other alcohol-related offense. Currently, expungement is allowed after one year or upon reaching 21 years of age;

(19) Requires any person who owns or licenses personal information of Missouri residents or conducts business in Missouri who owns or licenses personal information of a Missouri resident in any form to notify the affected consumer that there has been a breach of security following the discovery or notification of the breach. Any person maintaining or possessing records or data containing personal information on Missouri residents that the person does not own or license must also notify the owner or licensee of the information of any breach of security immediately following the discovery of the breach. The manner and description of the notice which must be provided in order to prevent violation of these provisions are specified. The Attorney General has the exclusive authority to bring an action to obtain actual damages for a willful and knowing violation and may seek a civil penalty not to exceed \$150,000 per security breach (Section 407.1500);

(20) Specifies that any person convicted of criminal securities fraud will be fined up to \$1 million, imprisoned for up to 10 years, or both and may be ordered to pay restitution for any loss plus interest at the rate of 8% per year from the date of the violation and an additional civil penalty of up to \$5,000 if the violation was committed against an elderly or disabled person (Sections 409.5-508 and 409.6-604);

(21) Creates the crime of failure to appear if a person knowingly fails to appear before any court or judicial officer as required. Failure to appear will be a class D felony if the criminal matter for which the person was released included a felony, a class A misdemeanor if the criminal matter includes a misdemeanor, or an infraction if the criminal matter includes only an infraction or a violation of a municipal ordinance (Section 544.665);

(22) Removes the requirement that court costs be assessed to the prosecutor in trespass cases and in certain capital cases and in all other trials on indictments or information if the defendant is acquitted or the prosecution fails (Sections 545.050 and 550.040);

(23) Specifies that the statute of limitations for certain arson offenses will be five years (Section 556.036);

(24) Removes the requirement that a full record of the proceeding must be made by split-screen imaging and recording of the proceedings in the courtroom and the place of custody or confinement when a person in custody is required to be present in court (Section 561.031);

(25) Revises the definition of "domestic assault offense" to include any offense committed in another state or any federal, tribal, or military offense which, if committed in Missouri, would be considered a domestic assault offense (Section 565.063);

(26) Expands the crime of assault of a law enforcement officer, emergency personnel, or probation and parole officer in the first, second, and third degrees to include a corrections officer (Sections 565.081, 565.082, and 565.083)

(27) Expands the crime of tampering with a judicial officer to include a juvenile officer, deputy juvenile officer, state prosecuting or circuit attorney, and state assistant prosecuting or circuit attorney (Section 565.084);

(28) Specifies that the Attorney General may request the prosecuting attorney of Cole County to issue a subpoena to any witness who may have information for the purpose of oral examination under oath in the course of a criminal investigation of a sexual or pornography offense if the venue of the alleged criminal conduct cannot be determined (Sections 566.013 and 573.013);

(29) Prohibits certain sexual offenders from knowingly being physically present in or loitering within 500 feet of or approaching, contacting, or communicating with any child younger than 18 years of age in any child care facility building or the real property comprising any child care facility when children younger than 18 years of age are present in the building or on the grounds unless the offender is the parent, guardian, or custodian of a child in the building or on the grounds. Any person violating these provisions will be guilty of a class A misdemeanor (Section 566.148);

(30) Prohibits certain sexual offenders from knowingly being present in or loitering within 500 feet of any real property comprising any public park with playground equipment or a public swimming pool. Any person violating this provision will be guilty of a class D felony for the first offense and a class C felony for a subsequent offense (Section 566.150);

(31) Prohibits certain sexual offenders from serving as an athletic coach, manager, or trainer for any sports team in which a child younger than 17 years of age is a member. Any person violating this provision will be guilty of a class D felony for the first offense and a class C felony for a subsequent offense (Section 566.155);

(32) Specifies that any person who possesses amphetamine or methamphetamine in the presence or residence of a person younger than 17 years of age will be guilty of endangering the welfare of a child in the first degree (Section 568.045);

(33) Specifies that a person who steals or receives a stolen firearm, explosive weapon, livestock, or certain captive wildlife will be guilty of a class C felony. Any person who is convicted of stealing or receiving stolen livestock or captive wildlife when the value of the animal or animals stolen exceeds \$3,000 will be guilty of a class B felony and must serve 80% of his or her prison sentence before being eligible for probation, parole, conditional release, or any other early release by the Department of Corrections (Sections 570.030 and 570.080);

(34) Specifies that the term "stealing-related offense" will include robbery and clarifies that a person who has pled guilty to or been found guilty of two separate stealing-related offenses which were committed on two separate occasions within 10 years of the date of the occurrence of the current offense will be guilty of a class B felony (Section 570.040);

(35) Removes the requirement that an offender have knowledge of the content and character of obscene materials or pornographic items for the crimes of promoting obscenity in the first and second degrees, sexual exploitation of a minor, promoting child pornography in the first and second degrees, possession of child pornography, furnishing pornographic material to minors, and coercing acceptance of obscene material (Sections 573.020, 573.023, 573.025, 573.030, 573.035, 573.037, 573.040, and 573.065);

- (36) Expands the standard for the crimes of sexual exploitation of a minor, possession of child pornography, and public display of explicit sexual material from knowingly to knowingly or recklessly (Sections 573.023, 573.037, and 573.060);
- (37) Expands the crime of resisting or interfering with an arrest, detention, or stop to include an arrest for a warrant issued by a court or a probation and parole officer. Anyone resisting or interfering with an arrest for a felony or a warrant issued for failure to appear on a felony case or for a probation violation on a felony case will be guilty of a class D felony (Section 575.150);
- (38) Creates the crime of disarming a peace or correctional officer if a person intentionally removes from or deprives the peace or correctional officer of the use of his or her firearm or other deadly weapon while the officer is acting within the scope of his or her official duties. The crime, a class C felony, does not include situations in which the person does not know or could not reasonably have known that the person was a peace or correctional officer or if the officer was engaged in felonious conduct at the time of the disarmament (Section 575.153);
- (39) Expands the crime of tampering with a judicial proceeding to include influencing the official action of a state prosecuting or circuit attorney, state assistant prosecuting or circuit attorney, or the Attorney General (Section 575.260);
- (40) Specifies that a person will be guilty of the crime of misuse of official information if he or she knowingly or recklessly obtains or discloses information from any criminal justice information sharing system that contains individually identifiable information (Section 576.050.2);
- (41) Allows a judge to order a person who pleads guilty to or is found guilty of an intoxication-related traffic offense to abstain from consuming or using alcohol as demonstrated by continuous alcohol monitoring or verifiable breath alcohol testing as a condition of probation (Section 577.023);
- (42) Specifies that the owner or possessor of a dog that has previously bitten a person or domestic animal without provocation and bites any person on a subsequent occasion will be guilty of a class B misdemeanor. If the attack results in serious injury to any person, the owner or possessor will be guilty of a class A misdemeanor. If the attack results in serious injury to any person and a previous attack also resulted in a serious injury to any person, the owner or possessor will be guilty of a class D felony. It will be a class C felony if the attack results in death (Section 578.024);
- (43) Specifies that any person who removes an electronic or radio transmitting collar from a dog without the permission of the dog's owner with the intent to prevent or hinder the owner from locating the dog will be guilty of a class A misdemeanor and ordered to pay restitution for any lost or killed dog and any lost breeding revenues (Section 578.028);
- (44) Prohibits the use or possession of an alcohol beverage vaporizer. Any substance that has been approved by the United States Food and Drug Administration as a therapeutic drug product, is contained in an approved over-the-counter drug product, or is administered lawfully by an order of an authorized medical practitioner is exempt from this provision. Anyone violating this provision will be guilty of a class B misdemeanor for the first violation and a class D felony for a subsequent violation (Sections 578.250 - 578.260);
- (45) Prohibits any person who owns or operates a business that operates as a live entertainment performance venue or receives over 50% of its gross annual income from the sale of recorded video entertainment from selling certain solvents to induce intoxication (Section 578.265.3);
- (46) Allows an offender of certain misdemeanor sexual offenses to petition to exempt his or her name from the sexual offender registry if he or she meets current qualifications for the removal or exemption and was younger than 19 years of age at the time of the offense (Section 589.400);
- (47) Specifies that any person who has committed an offense in any other state or foreign country or under federal, tribal, or military jurisdiction, which if committed in Missouri would be a sexual offense, will be guilty of a class C felony if the person fails to register as a sexual offender on a second offense (Section 589.425);
- (48) Requires custodial interrogations of certain offenders to be recorded when feasible unless certain exceptions exist, requires law enforcement agencies to adopt written policies regarding interrogations, allows law

enforcement agencies to record an interrogation in any circumstance with or without knowledge or consent of the suspect, and allows the Governor to withhold state funds from a law enforcement agency that fails to comply with the provisions of this section (Section 590.701);

(49) Specifies that circuit courts do not have to use a beyond a reasonable doubt standard when determining if an individual is a sexually violent predator and requires any person required to register as a sexual offender to provide a fingerprint in addition to the current requirement of a blood or scientifically accepted biological sample for the purpose of DNA profiling analysis (Section 650.055);

(50) Establishes the Crime Laboratory Review Commission within the Department of Public Safety to provide an independent review of any state or local crime laboratory receiving state administered funds. The commission must submit an annual report to the Governor on its activities and any suggestions to improve the quality management systems within the crime laboratories (Section 650.059);

(51) Allows law enforcement officers to inspect any record open to inspection by the State Veterinarian or the Department of Agriculture of any livestock sales or market licensee without prior notice or obtaining a search warrant during regular business hours to determine the origin and destination of any livestock handled by the licensee. Anyone violating or failing to comply with this provision will be guilty of a class A misdemeanor, and gross negligence or willful noncompliance by a licensee will result in the suspension or revocation of his or her license (Section 1);

(52) Changes all references in statute of "Criminal Records and Identification Division" or "Criminal Records Division" to "Central Repository" (Section 2);

(53) Creates the crime of promoting online sexual solicitation if the person or entity knowingly allows a web-based classified service owned or operated by a person or entity to be used by individuals to post advertisements promoting prostitution, enticing a child to engage in sexual conduct, or promoting sexual trafficking of a child after receiving notice by certified mail or facsimile transmission from the Attorney General or any prosecuting or circuit attorney that the advertisement is prohibited. Anyone promoting online sexual solicitation will be guilty of a felony, punishable by a \$5,000 fine for each day the advertisement remains posted after 72 hours of receiving the notice (Section 3); and

(54) Repeals provisions regarding the cutting requirements of a person owning a hedge fence situated along the right-of-way of any public road and certain provisions regarding the payment of costs in criminal cases (Sections 229.110, 550.050, 550.070, 550.080, and 550.090).

The bill contains an emergency clause for the provisions regarding a judge ordering certain individuals to continuous alcohol monitoring or verifiable breath alcohol testing as a condition of probation and the repeal and re-enactment of Section 577.029.

Copyright (c) Missouri House of Representatives

## **SS#2 SCS HB 103 PUBLIC SAFETY**

Establishes the Public Access to Automated External Defibrillator Act which grants immunity for civil damages to any person who gratuitously and in good faith renders medically appropriate emergency care using an automated external defibrillator unless the person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance.

Requires, beginning January 1, 2010, a person owning a boat dock on a lake with at least 950 miles of shoreline or on a lake constructed or maintained by the United States Army Corps of Engineers with certain specified exceptions to display the appropriate 911 address or the physical address nearest to the dock by land. The bill specifies how and where the address must be displayed. A person who fails to display the identifying information may be guilty of an infraction with a penalty not to exceed \$25. §190.092 and 306.903, RSMo

Copyright (c) Missouri House of Representatives

## **SS HB 132 SALE OF LIQUOR**

This bill changes the laws regarding the sale of liquor. In its main provisions, the bill:

- (1) Regulates nonintoxicating beer in the same manner as intoxicating liquor by repealing Chapter 312, RSMo, and removing all references to Chapter 312 and nonintoxicating beer;
- (2) Repeals the provision restricting a liquor licensee's employee with a felony conviction unrelated to the manufacture or sale of alcohol from directly participating in retail sales;
- (3) Allows certain charitable, fraternal, religious, service, or veterans' organizations that are exempt from federal taxes and have or are qualified to have a license to sell intoxicating liquor by the drink on their premises to open on Sundays at 9:00 a.m. instead of 11:00 a.m.;
- (4) Specifies that "wine manufacturers" will mean any person, partnership, association of persons, or corporation which obtains a license and manufactures over 200 gallons of wine per calendar year;
- (5) Allows a restaurant bar without an onsite brewery that serves 45 or more different types of draft beer to sell 32 fluid ounces or more of beer to customers for consumption off the premises;
- (6) Limits a person or business to having five liquor licenses rather than the current limit of three;
- (7) Repeals the provisions allowing certain licensed liquor and wine wholesalers to offer limited price discounts for certain quantities of any brand and type of liquor and wine and for closeout merchandise;
- (8) Repeals the provision requiring wholesalers to follow a monthly price schedule filed with the Supervisor of the Division of Alcohol and Tobacco Control within the Department of Public Safety;
- (9) Requires wholesalers to make available to retailers certain product information, including price, no later than five days prior to the first day of the month in which the pricing will be effective. Supplemental pricing information can be provided to retailers after approval by the division for new or unintentionally omitted items from the monthly item information listing, and the items can then be sold immediately;
- (10) Authorizes wholesalers to offer merchandise below their cost only if it is designated as closeout merchandise in the monthly pricing information for at least six consecutive months and prohibits them from purchasing new liquor and wine while it is designated as closeout merchandise;
- (11) Requires delivery orders to be invoiced at the price in effect when the delivery is made, except for delayed shipments which can be invoiced at the price in effect when the order is placed. Currently, delayed shipment orders are those received during the last three business days of a month and delivered during the first three business days of the following month. The bill changes those time periods from three to five business days;
- (12) Specifies that no person holding a license or permit will be guilty of a misdemeanor for offering for sale wine or brandy if the manufacturer has provided the division supervisor a copy of the certificate label approval issued by the Alcohol and Tobacco Tax and Trade Bureau and, if required, has properly registered the label or name with the appropriate state agency; and
- (13) Allows a Kansas City festival district's promotional association to obtain a permit from the division to sell intoxicating liquor for consumption at the businesses and common areas within the festival district. The city must conduct a public hearing on the promotional association's proposed plan regarding the festival and obtain written approval for the event from 50% of the property owners, business owners, and residents within the district and within 185 feet of the district's borders. No minors will be allowed to enter the festival district during a festival event that serves liquor, and no one will be allowed to take an alcoholic beverage outside the festival district boundaries. The district is limited to 25 events per year and two events per month. No event can last longer than 48 hours. The association may be assessed a civil fine of up to \$5,000 for an alcohol violation and its permit may be revoked if there are alcohol violations at three separate events. §2.047, 311.020, 311.055, 311.060, 311.070, 311.090, 311.181, 311.182, 311.192, 311.195, 311.196, 311.200, 311.211, 311.212, 311.218, 311.260, 311.265, 311.280, 311.290, 311.300, 311.332, 311.333, 311.335, 311.338, 311.360, 311.480, 311.482, 311.485, 311.486,

311.487, 311.489, 311.490, 311.520, 311.610, 311.630, 311.665, 311.680, 311.685, 311.722, 313.075, 313.340, 313.665, 313.840, 571.107, and 650.005, RSMo

The provisions regarding the Kansas City festival district will expire two years from the effective date.

*Copyright (c) Missouri House of Representatives*

### **SS HCS HB 152 DNA PROFILING SYSTEM**

This bill expands the DNA profiling system by requiring any person 17 years of age or older who is arrested for first degree burglary under Section 569.160, RSMo; second degree burglary under Section 569.170; or a felony under Chapters 565, 566, 567, 568, or 573 to provide a blood or scientifically accepted biological sample upon booking at a county jail or detention facility for the purpose of DNA profiling analysis. Within 90 days of a warrant refusal, the arresting agency must notify the State Highway Patrol crime laboratory, which must expunge all the DNA records taken at the arrest and destroy the sample unless the patrol determines that the person is otherwise obligated to submit a sample. The prosecutor is required to notify the laboratory if the charges are withdrawn; and the court must notify the laboratory if the case is dismissed, the court finds that no probable cause exists that the person committed the crime, or the defendant is found not guilty. If the laboratory receives notice, it must expunge the sample and DNA profile within 30 days. §650.050, 650.052, and 650.055, RSMo

*Copyright (c) Missouri House of Representatives*

### **CCS#2 SS HCS HB 154 CHILD PLACEMENT AND FOSTER CARE**

This bill establishes the Foster Care Education Bill of Rights and changes the laws regarding the placement of children and the appointment of standby guardians.

#### **FOSTER CARE EDUCATION BILL OF RIGHTS (Sections 167.018, 167.019, and 210.1050, RSMo)**

The Foster Care Education Bill of Rights is established requiring each school district to designate a staff person to act as the educational liaison for children in foster care. The liaison will facilitate the proper educational placement and expedite record requests and submissions. Foster care pupils will have the right to remain enrolled in their school of origin pending resolution of school placement disputes. Districts must accept credit for work satisfactorily completed; and if a pupil under the jurisdiction of the juvenile court completes graduation requirements, the school district of residence must issue a diploma. Students must not be penalized for absences resulting from required court appearances or court-related activities. Districts are authorized to permit access of a pupil's records to child-placement agencies within the limits of federal law. Children in foster care or children placed in a licensed residential care facility are entitled to a full six-hour school day unless the school district determines that fewer hours are needed. The Commissioner of Education will act as an ombudsman for children placed for treatment in a licensed residential facility by the Department of Social Services and will make the final determination over discrepancies regarding school day length.

#### **PLACEMENT OF CHILDREN (Sections 210.305, 210.565, and 453.030)**

When an emergency placement of a child is deemed necessary by the juvenile or family court, the bill requires the Children's Division within the Department of Social Services to make documented diligent efforts to locate, contact, and place the child with a grandparent unless the division determines that the placement is not in the best interest of the child. The division must have documented in writing just cause for the non placement with a grandparent. Prior to placing a child in any emergency placement, the division must make sure that the child's physical needs are met. The placement with a grandparent is subject to an emergency placement background check. Diligent efforts must be made to contact the grandparent or grandparents of a child within three hours from the time an emergency placement is deemed necessary. During this time period or if the grandparent or grandparents cannot be located, the child may be placed in an emergency placement. The division must continue to make diligent efforts to contact, locate, and place the child with a grandparent or grandparents, or another relative, with first consideration given to a grandparent for placement. The provisions of this section are not to interfere with or supersede the laws relating to parental rights or judicial authority.

When a court determines that a child must be placed in a foster home, the division must make diligent efforts to locate the grandparents of the child and determine if they wish to be considered for placement of the child.

A grandparent or other relative can, on a case-by-case basis, have the standards for licensure of his or her home waived, except for the standards related to safety, for specific children in care if those standards impede the licensing of the grandparent's or other relative's home.

A guardian ad litem must ascertain a child's wishes and feelings about his or her placement through interviews with the child, if appropriate, based on the child's age and maturity level, and must be considered as a factor in placement decisions and recommendations. This consideration will not supersede the preference for relative placement or be contrary to the child's best interests. In a case involving the adoption of a child younger than 14 years of age, the guardian ad litem must ascertain the child's wishes and feelings, if appropriate, based on the child's age and maturity level, and must be considered as a factor in determining if the adoption is in the child's best interests.

#### **STANDBY GUARDIAN OF MINORS OR INCAPACITATED PERSONS (Sections 475.010 - 475.105)**

A custodial parent may designate a person to act as a standby guardian for a minor or an incapacitated person by a will or by a separate written instrument.

If a parent who has designated a standby guardian is or becomes seriously ill, the parent or designated standby guardian may file a petition in probate court seeking appointment of the person as the standby guardian of the minor or incapacitated person. The petition must be filed with a copy of the will or the written instrument designating the standby guardian and consent to act as the standby guardian by the designated person.

The petition must contain certain identifying and contact information for the minor or incapacitated person, the custodial parent and designated standby guardian, each parent of the minor or incapacitated person, the spouse and all living children of the minor or incapacitated person, and information about any adjudication of incapacity and the reasons why a standby guardian is sought.

The court must determine the appointment of a standby guardian in accordance with the best interests of the minor or incapacitated person after considering whether there is a parent other than the custodial parent willing, able, and fit to assume the duties of a parent; the suitability of any person nominated by the minor or incapacitated person to be the standby guardian if he or she can communicate a reasonable choice; and the desirability of arrangements which minimize stress and disruption and avoid the placement of the minor or incapacitated person in foster or similar care if the custodial parent becomes incapacitated or dies.

The authority of the person to act as the standby guardian will only take effect if the person has previously been appointed by the court as a standby guardian or if the person has not yet been appointed upon the first to occur of the following: (1) if the consent of the custodial parent is given in a written, duly executed instrument; (2) if an entry of an order adjudicating the custodial parent as incapacitated has been entered; or (3) if the custodial parent dies. The standby guardian must notify the court in writing within 10 days after he or she begins acting as the standby guardian of that fact and of the reasons and must petition the court within 60 days for appointment as the standby guardian or for another qualified person to be appointed as the guardian for the minor or incapacitated person.

Nothing in these provisions is to be construed to deprive a parent of his or her legal rights nor to authorize a grant of authority to a standby guardian which would supersede any of these rights or to relieve his or her obligations or duties to a minor or incapacitated person.

*Copyright (c) Missouri House of Representatives*

#### **SCS HB 171 LANDLORD-TENANT**

In the absence of a written contract to the contrary, this bill exempts a tenant from liability for rent payments during the remainder of the term of a lease agreement when his or her residence is destroyed by an act of God or other natural or man-made disaster unless the tenant caused the disaster. Chapter 441, RSMo

*Copyright (c) Missouri House of Representatives*

## **SCS HCS HB 177 AND HCS HB 622 COURT RECORDS**

Authorizes the judge presiding over a domestic assault, sexual assault, stalking, or forcible rape case to publicly disclose identifying information regarding the defendant which could be used to identify or locate the victim of the crime. The victim may provide a statement regarding whether or not he or she wants the information to remain closed. The judge must consider the statement of the victim and the welfare and safety of the victim in determining whether to disclose the information. §566.226, RSMo

*Copyright (c) Missouri House of Representatives*

## **SS SCS HCS HB 205 FIRE SAFETY STANDARD AND FIRE PROTECTION ACT**

Establishes the Fire Safety Standard and Firefighter Protection Act which prohibits the sale of any cigarette in this state that has not been tested, certified, and marked that it has met certain performance standards. Any manufacturer, wholesale dealer, agent, or other person or entity that violates this requirement other than through retail sale may be fined up to \$100 per pack of cigarettes sold or offered for sale. No penalty against a manufacturer, wholesale dealer, or agent can exceed \$100,000 during any 30-day period. A retail dealer may be engaged in the manufacture of cigarettes that knowingly makes a false certification will be subject to a penalty of between \$75,000 and \$250,000. Other violations of the act will result in a civil fine of up to \$1,000 for a first violation and up to \$5,000 for a subsequent offense. The Attorney General and the Department of Revenue are authorized to enforce the provisions of the bill. All fines will be deposited into the newly created Cigarette Fire Safety Standard and Firefighter Protection Act Fund which must be used by the State Fire Marshal to support fire safety and prevention programs. The State Fire Marshal must review the effectiveness of the act and report his or her findings and, if appropriate, legislative recommendations to the General Assembly by June 30 every three years. The bill becomes effective January 1, 2011. §320.350, 320.353, 320.356, 320.359, 320.362, 320.365, 320.368, 320.371 and 320.374, RSMo

*Copyright (c) Missouri House of Representatives*

## **SCS HCS HB 237, 238 AND 482 COURTS**

This bill changes the laws regarding courts and court procedures. In its main provisions, the bill:

- (1) Requires a person to appear on a service of summons no less than 10 days nor more than 60 days from the date the summons was delivered instead of the current nor more than 30 days;
- (2) Allows the required annual report of the Judicial Finance Commission regarding the finances of the Judicial Department to be consolidated with any other annual report prepared by the Missouri Supreme Court or the Office of State Courts Administrator if it is distributed to the required parties;
- (3) Allows municipal courts to create an appointed counsel fund to pay the reasonable fees approved by the court for any attorney appointed to represent a defendant who is found by the judge to be indigent and unable to pay for legal representation and where prescribed by Supreme Court rules or the law; and
- (4) Specifies that moneys for the appointed counsel fund will come from the \$1 fee collected on each case which currently is deposited into the judicial education fund. The court will determine the allocation of the fees between the accounts, but no court can retain more than \$1,500 in the judicial education fund for each judge, administrator, or clerk of the court and no more than \$5,000 in the appointed counsel fund. §477.600, 479.260, 488.429 and 517.041, RSMo

*Copyright (c) Missouri House of Representatives*

## **SCS HB 239 MANAGEMENT OF TRUSTS AND FUNDS**

Changes the laws regarding the management of trusts and funds. Specifies a procedure for the modification. This bill changes the laws regarding the management of trusts and funds. In its main provisions, the bill:

- (1) Allows the University of Missouri Board of Curators to use up to 2% annually of the total market value of the university's endowment to support internal endowment administration and development functions;

(2) Allows certain banks, trust companies, savings and loan associations, and savings banks to transfer by assignment some or all of its fiduciary obligations consisting of irrevocable life insurance trusts to the Missouri Trust Office of an out-of-state bank with trust powers or an out-of-state trust company;

(3) Establishes guidelines for the management, investment, and expenditures of endowment funds held by charitable institutions and other entities holding funds for charitable purposes. Subject to the intent and any specific limitation of a donor, the investment manager must manage and invest the fund in good faith with the care an ordinary, prudent person in a like position would take. Delegation of fund management to an external agent must also be made in good faith. The assets of the fund must be diversified, unless the institution determines that because of special circumstances the funds are better served without diversification. The assets can be pooled together with other institutional funds for the purposes of management and investment. Other criteria for investment decisions are specified in the bill;

(4) Specifies a procedure for the modification of a donor restriction in certain instances. If a restriction is on a fund with less than \$50,000, it may be modified in a manner consistent with the charitable purpose of the gift after 10 years upon notification to the Attorney General and a 60-day waiting period without court approval. Courts may modify the purpose of a fund or any restrictions if they are unlawful, impracticable, impossible to achieve, or wasteful. The Attorney General may intervene to provide an opinion on the proposed modification;

(5) Authorizes a trustee of a trust that became irrevocable on or before September 25, 1985, to distribute trust income and principal to qualified remainder beneficiaries, in certain specified circumstances. A "qualified remainder beneficiary" is a descendant of a permissible distributee who will be eligible to receive trust income upon the death of a permissible distributee or the termination of a trust. Permissible distributees must be notified of any distribution of trust income to a qualified remainder beneficiary 60 days prior to any transfer. Trustees in certain specified counties may publish creditor notices in a local newspaper; and

(6) Requires personal representatives of an estate to invest the estate's funds in accordance with the Missouri Prudent Investor Act unless otherwise specified by a will. Instruments guaranteed as to principal and interest by the United States and accounts insured by the Federal Deposit Insurance Corporation (FDIC) are considered prudent investments. Delegation of account management responsibilities to an agent requires a written acknowledgment by the agent that they are acting as an investment fiduciary on the account. Conservators of an estate must also follow these rules unless they obtain court approval. Conservators will no longer be able to sell or exchange assets worth less than \$1,000 without court approval. §172.290, 362.333, 369.162, 402.130, 402.132, 402.134, 402.136, 402.138, 402.140, 402.142, 402.144, 402.146, 402.148, 456.4-418, 456.5-505, 469.411, 472.335, 473.333, 475.130, and 475.190, RSMo

*Copyright (c) Missouri House of Representatives*

## **HCS HB 273 ESTATE DISBURSEMENT**

Any expenditure of more than \$75 for which a personal representative claims credit in a settlement on a decedent's estate must be supported by a voucher executed by the person to whom the disbursement was made. The legislation allows other documentation, such as an electronic copy of a check or a bank statement, to establish to the court's satisfaction that the payment claimed in a settlement was actually made to the claimant. §473.543, RSMo

## **SS HCS HB 481 COURTS AND JUDICIAL PROCEEDINGS**

This bill changes the laws regarding courts and judicial proceedings. In its main provisions, the bill:

(1) Allows the county commission in third and fourth classification counties to appoint the county surveyor if no qualified candidate has filed for the office by the filing deadline in the general election when that office would have been on the ballot if the required notice in Section 115.345, RSMo, has been published in at least one newspaper of general circulation in the county (Section 60.010);

- (2) Raises the maximum fine for all municipal ordinance violations in the City of Kansas City from \$500 to \$1,000, except for ordinances requiring compliance by an industrial user with a pretreatment standard or requirement (Section 82.300);
- (3) Allows the City of Kansas City to adopt ordinances to authorize the city building official or his or her representative to petition the circuit court in the county in which a vacant nuisance building or structure is located for the appointment of a receiver to rehabilitate, demolish, or sell the building or structure to a qualified buyer (Section 82.1026);
- (4) Requires the St. Louis City Police Department to have no more than five members with the rank of lieutenant colonel and other ranks and number of members within each rank as the Board of Police Commissioners deems necessary, and requires members of the St. Louis City reserve police force to be retired city officers and gives them the same powers as regular officers (Sections 84.150 and 84.175);
- (5) Authorizes an additional county collector fee of 5% on all moneys collected from delinquent and back taxes in the counties of Jackson and St. Louis which can be added to the tax bill and collected accordingly (Section 141.160);
- (6) Establishes a tuition and fee waiver program beginning with the 2010 fall term for incoming Missouri resident college freshmen who have been in foster or residential care at certain times (Section 173.270);
- (7) Specifies that the state will no longer require families receiving Temporary Assistance for Needy Families (TANF) benefits to assign the right to receive any pre-existing child support arrearages occurring before the family received TANF benefits. Families will continue to assign child support arrearages that become due while they receive temporary assistance (Sections 208.040 and 208.055);
- (8) Specifies that a detainer will not be lodged against any person confined in a correctional facility until the Director of the Department of Corrections receives a certified copy of a warrant and a written request by the issuing agency to place the detainer. Failure of the director to comply will not be the basis for dismissing the indictment, information, or complaint unless the court also finds that the offender has been denied the constitutional right to a speedy trial (Sections 217.450 and 217.460);
- (9) Designates the portion of Interstate 64/U. S. 40 from the McClausland/Skinker interchange east to the Interstate 64/Interstate 55 interchange as the "Jack Buck Memorial Highway" (Section 227.409);
- (10) Repeals provisions regarding the cutting requirements of a person owning a hedge fence situated along the right-of-way of any public road (Section 229.110);
- (11) Authorizes the Secretary of State to charge a \$45 fee for a corporate filing of the original articles of organization in an electronic format (Chapters 347, 351, 355, and 356);
- (12) Allows the Secretary of State to administratively cancel the articles of organization of limited liability companies and limited liability partnerships if the period of duration on the articles expires and the company or partnership does not amend the articles in a timely manner. The Secretary of State may administratively reinstate the company's or partnership's status under certain circumstances (Sections 347.183 and 359.681);
- (13) Allows, beginning January 1, 2010, a corporation to file a corporate registration report on a biennial basis and to change the month of its corporate registration report by designating the desired month and paying an additional \$20 fee. Corporations incorporated in an even-numbered year may only file a report in an even-numbered year, and corporations incorporated in an odd-numbered year may only file a report in odd-numbered years. The fee for filing the biennial report will be \$80 if filed in a written format and \$30 if in an electronic format. Any corporation filing a biennial report must maintain the registration for two years, but may choose to file an annual registration in subsequent years. The Secretary of State is allowed to collect an additional \$10 fee for each biennial corporate report filed to be credited to the Secretary of State's Technology Trust Fund Account (Chapters 351, 355, and 356);
- (14) Changes the deadline when the Secretary of State may commence a proceeding to dissolve a corporation for failing to deliver its corporate registration report to within 90 days after it is due. Currently, the Secretary of

State may commence a proceeding if the report is not delivered within 30 days after it is due (Sections 351.125, 351.484, and 355.706);

(15) Limits the total duration for which a corporate name can be reserved to 180 days. Currently, the Secretary of State reserves a corporate name for an applicant's exclusive use for a 60-day period (Section 355.151);

(16) Establishes guidelines for the actual charges and actual fees collected regarding an individual or a group specified disease insurance policy (Section 376.789);

(17) Specifies that operating a motorcycle, in and of itself, will not be considered evidence of comparative negligence in any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle. When investigating an accident or settling a claim, no insurer, agent, producer, or claims adjuster can assign a percentage of fault to a party based upon the sole fact that the party was operating a motorcycle in an otherwise legal manner (Sections 379.130 and 537.055);

(18) Requires only the last four digits of the Social Security numbers of the parties to be listed on certain court filing documents and the full number to be kept confidential (Chapters 452 and 454 and Section 509.520);

(19) Removes the provision allowing courts to appoint volunteer advocates to assist guardians ad litem (Section 452.423);

(20) Allows a judge to take any action necessary and reasonable to prevent an international abduction of a child by a parent (Section 452.426);

(21) Repeals the Uniform Child Custody Jurisdiction Act and establishes, in its place, the Uniform Child Custody Jurisdiction and Enforcement Act. The act specifies the procedures, priorities, and factors to be considered in initial custody jurisdiction determinations, continuing jurisdiction determinations, modification of custody determinations, and emergency orders (Sections 452.440 - 452.550 and 452.700 - 452.930);

(22) Revises the definition of "adult" as it relates to adult abuse by lowering the age from a person 18 years of age or older to a person 17 years of age or older (Section 455.010);

(23) Requires the public administrator to serve as the trustee or successor trustee when appointed by the circuit court or the probate division of the circuit court (Section 473.743);

(24) Allows an individual 18 years of age or older who has been adjudged incapacitated under Chapter 475 or who has been involuntarily committed under Chapter 632 to petition the probate court for a removal of the disqualification to purchase, possess, or transfer a firearm. Individuals must prove that they no longer suffer from the condition that rendered them incompetent and that they pose no danger to themselves or others. If the court grants the petition, the county clerk must forward the order to the State Highway Patrol to update the National Instant Criminal Background Check System (Section 475.375);

(25) Removes the municipal court judge member from the Commission on Judicial Resources and requires the Clerk of the Missouri Supreme Court to provide suitable staff for the commission out of appropriated funds (Section 476.415);

(26) Removes the provision that allows a deposition prepared by a non-certified court reporter to be used in any court under certain circumstances (Section 485.077);

(27) Repeals provisions allowing a statute of limitation to not apply for the period of time that a Missouri resident resides out of the state (Section 516.200);

(28) Requires a person to appear on a service of summons no less than 10 days nor more than 60 days from the date the summons was delivered instead of the current nor more than 30 days and removes the requirement that if the claim exceeds the jurisdictional limits of the court division, it must be certified to the presiding judge for assignment (Section 517.041);

- (29) Removes the requirement that the clerk of the court send notice to a person who has had a default judgment entered against them in an eviction action by certified mail with return receipt requested and requires it to be sent by ordinary mail (Section 535.030);
- (30) Changes when an eviction proceeding can commence from when the rent is six months in arrearage to when it is one month in arrearage (Section 535.120);
- (31) Requires the judge or jury to visit the nuisance site in a private nuisance action where the amount in controversy exceeds \$1 million if requested by either party (Section 537.296);
- (32) Specifies that any claim filed against any public entity under the Missouri Human Rights Act will be subject to the penalties in successor rule to Missouri Supreme Court Rule 55.03 (Section 537.610);
- (33) Removes the requirement that court costs be assessed against the prosecutor in trespass cases if the defendant is acquitted or the prosecution fails (Section 545.050);
- (34) Removes the requirement that when using two-way audio-visual communication for certain criminal proceedings, a full record of the proceeding must be made by split-screen imaging and recording of the proceedings in the courtroom and the place of custody or confinement when a person in custody is required to be present in court. Two-way audio-visual communications are allowed for preliminary hearings with the consent of the defendant and in any civil or criminal proceedings which are not required to be a matter of record or by the consent of the parties (Section 561.031);
- (35) Allows the Division of Developmental Disabilities within the Department of Mental Health to contract directly with providers of targeted case management services for clients of the division in a defined region that has not established a local developmental disability services board, commonly known as a Senate Bill 40 board (Section 630.407);
- (36) Specifies that circuit courts do not have to use a beyond a reasonable doubt standard when determining if an individual is a sexually violent predator and for DNA profiling analysis (Section 650.055);
- (37) Allows the court, upon motion, to award court costs and attorney fees to the state in child support modification cases where the state is a party (Section 1);
- (38) Requires all public advertisements and orders of publication required by law including, but not limited to, amendments to the Missouri Constitution, legal publications affecting sales of real estate under a power of sale in a mortgage or deed of trust, and other legal publications affecting the title to real estate to be published in a newspaper of general circulation (Section 2);
- (39) Prohibits any political subdivision of the state and any local government or any agency, authority, board, commission, or department or its officers from enacting any ordinance or establishing or issuing any regulation, rule, policy, guideline, or proclamation describing the relationship between persons and domestic animals as other than persons may own domestic animals (Section 3); and
- (40) Specifies that nothing in the Fire Safety Standard and Firefighter Protection Act can be interpreted or applied to permit noncompliance with other applicable statutes and case law (Section 4).

Copyright (c) Missouri House of Representatives

**HB 652 CERTIFIED MAIL**

Defines "certified mail" and "certified mail with return receipt requested" as the terms relate to the laws of this state to include any parcel or letter carried by a delivery service that allows a sender or recipient to electronically track its location and provides a record of the signature of the recipient. §1.020, RSMo

## **CCS SS SCS HB 683 TRANSPORTATION**

### **DRIVER IMPROVEMENT PROGRAMS (Sections 302.302 and 476.385)**

A court using a centralized violation bureau is allowed to provide an individual who has violated certain traffic violations the option of attending a driver-improvement program or motorcycle-rider training course in lieu of assessing points against the person's driver's license. The individual must verify his or her attendance as directed by the bureau when paying the required fines and court costs.

### **TRAFFIC FINE REVENUES (Section 302.341)**

Currently, if a city, town, or village receives more than 45% of its total annual revenue from fines for traffic violations, all revenue from these violations in excess of 45% must be sent to the Department of Revenue. The bill reduces the amount to 35% of the annual general operating revenue but includes court costs for traffic violations in the amount. The Director of the Department of Revenue is required to establish a procedure for the excess revenue to be sent to the department. If a city, town, or village disputes the determination that it has received excess revenue, it may submit to an annual audit by the State Auditor

### **MOTOR VEHICLE VIOLATION PENALTIES (Sections 301.131, 301.150, 301.310, 301.420, 301.440, 301.716, 307.010, 307.015, 307.090, 307.120, 307.125, 307.155, 307.172, 307.173, 307.195, 307.198, 307.365, 307.375, 307.390, 307.400, 488.006, and 556.021)**

The bill changes the laws regarding the penalties for certain violations of motor vehicle licensing, registration, and equipment provisions. In its main provisions, the bill:

- (1) Changes the penalties for persons violating the provisions of Sections 301.010 - 301.440 regarding registration and licensing of motor vehicles. Currently, persons violating a provision of these sections can be found guilty of a class C misdemeanor and be subject to a fine of not less than \$5 or more than \$500 and/or imprisonment in the county jail for a term not exceeding one year. The bill reduces the penalty to an infraction with the same fines;
- (2) Specifies that any person who willfully or knowingly makes a false statement on an application for the registration of a motor vehicle or trailer, or as a dealer, or in an application for or assignment of a certificate of ownership will be guilty of a class C misdemeanor;
- (3) Changes a violation of the following from a misdemeanor to an infraction:
  - (a) Provisions of Sections 301.700 - 301.714 and Section 307.198 regarding all-terrain vehicles;
  - (b) Provisions regarding when materials fall off a vehicle, trailer, or semitrailer while being transported or carried;
  - (c) Provisions requiring vehicles to be equipped with mud flaps;
  - (d) Provisions of Sections 307.020 - 307.120 regarding vehicle spotlamp regulations;
  - (e) Provisions regarding the lighting or reflective marking requirements for animal-driven vehicles;
  - (f) Provisions of Sections 307.130 - 307.160 regarding vehicle safety glass;
  - (g) Provisions regarding maximum vehicle bumper heights;
  - (h) Provisions regarding vehicle side window tinting;
  - (i) Provisions regarding the improper operation of a motorized bicycle;
  - (j) Provisions of Sections 307.350 - 307.390 regarding motor vehicle inspections; and
  - (k) Provisions of Section 307.400 regarding commercial vehicles and drivers of commercial vehicles;

- (4) Changes a violation of the following from an infraction to a class C misdemeanor:
  - (a) Provisions of Section 307.365 regarding requirements of official inspection stations; and
  - (b) Provisions of Section 307.375 regarding inspections of buses used to transport children to or from school;
- (5) Requires Missouri courts, unless otherwise provided by law, to assess all court costs, fees, surcharges, and other miscellaneous charges for any infraction in the same manner and amount as for a misdemeanor;
- (6) Specifies that an offense is an infraction if it is designated as one or if a violation can result only in a fine, forfeiture, other civil penalty, or any combination thereof. A determination of whether an infraction has occurred will be made by the filing of a civil action. The action must be filed by a person who is authorized to bring a criminal action or an action to enforce an ordinance if the conduct constituted a crime or ordinance violation. The action will be brought in the name of the state or the appropriate political subdivision. An infraction violation must be proved by a preponderance of the evidence but must not be tried by a jury. If an infraction violation is proven, judgment must be entered for the plaintiff; and
- (7) Requires the driver of any vehicle or the rider of any animal traveling on a roadway to stop on the signal of any law enforcement officer and to obey any reasonable signal or direction of the officer given in the course of enforcing any infraction. Any person who willfully fails or refuses to obey any signal or direction or who willfully resists or opposes an officer in the proper discharge of his or her duties while enforcing any infraction will be guilty of a class A misdemeanor.

#### **COMMERCIAL DRIVER'S LICENSES (Sections 302.545, 302.700, 302.735, 302.755, 302.775, and 311.326)**

The bill prohibits the expungement of a minor in possession charge or for being found guilty with a blood-alcohol content of at least .04 for the holder of a commercial driver's license or a person operating a commercial motor vehicle when the violation occurred. Any person will be disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted for the first violation of an alcohol-related offense.

The Director of the Department of Revenue will disqualify a commercial driver's license holder or operator of a commercial motor vehicle as a commercial driver upon receipt of a conviction for an offense or failure to appear or pay. The disqualification will remain in effect until the department director receives notice that the person has complied with the requirement to appear or pay.

The state must immediately revoke a hazardous materials endorsement upon receipt of an Initial Determination of Threat Assessment and Immediate Revocation from the federal Transportation Security Administration and must revoke or deny a hazardous materials endorsement within 15 days of receipt of a final determination. The definition of "hazardous materials" is revised to be consistent with federal law and regulations.

The bill clarifies the commercial driver's license exemption for a farm vehicle by specifying that it must be operated by a farmer or his or her employees or family member while transporting agricultural products, machinery, supplies, or a combination of these within 150 miles to or from the farm and not used in the operations of a common or contract motor carrier.

Any person convicted for driving while out of service will be disqualified from driving a commercial motor vehicle in a manner prescribed by federal regulations instead of the current specified time period.

#### **TOWING ABANDONED VEHICLES (Section 304.155)**

Currently, property is considered to be abandoned when it has been on the right-of-way of any highway or freeway in an urbanized area for 10 hours. Property on the right-of-way on any highway or freeway outside of an urbanized area is not considered abandoned until it has been on the right-of-way for 48 hours. The bill specifies that property outside of an urbanized area will be considered abandoned after it has been left unattended for 24 hours on the right-of-way of any state or interstate highway.

The bill also authorizes law enforcement officers to tow a vehicle abandoned by a person who eludes arrest for an alleged offense for which the officer would have taken the offender into custody and allows officers to immediately remove abandoned property from the right-of-way of any interstate, freeway, or state highway if the abandoned

property is creating a traffic hazard. Currently, only the Department of Transportation is authorized to immediately remove a hazard from a state highway.

#### TRAFFIC CONTROL SIGNALS (Section 304.285)

The bill creates an affirmative defense for any person operating a motorcycle or bicycle who enters or crosses an intersection controlled by a traffic signal against a red light if the motorcycle or bicycle has been brought to a complete stop, the traffic signal shows a red light for an unreasonable time, the traffic signal is apparently malfunctioning or has apparently failed to detect the arrival of the motorcycle, and no motor vehicle or person is approaching or is so far away that it does not constitute an immediate hazard.

#### ASSAULT OF A HIGHWAY WORKER (Sections 565.081 - 565.083)

The crime of assault of a law enforcement officer, emergency personnel, or probation and parole officer in the first, second, and third degrees is expanded to include a highway worker in a construction or work zone or a corrections officer.

*Copyright (c) Missouri House of Representatives*

#### **HB 747 SEXUAL CONTACT WITH A PRISONER**

Specifies that a person commits the crime of sexual contact with a prisoner or offender if the prisoner or offender is confined in a jail, prison, or correctional facility. §566.145, RSMo

#### **HB 826 SEXUALLY VIOLENT PREDATORS**

Authorizes the Department of Mental Health to enter into a contract agreement with one or more county jails in this state for the confinement of a person ordered to the department after a determination by a court that he or she may meet the definition of a sexually violent predator or for the confinement of a person ordered to the department after a finding of probable cause under Section 632.489, RSMo. These individuals must be housed and managed separately from offenders in the custody of the county jail. §630.110, 632.489, and 632.495, RSMo

*Copyright (c) Missouri House of Representatives*

#### **HCS HB 863 CHILD WITNESS PROTECTION ACT**

Establishes the Child Witness Protection Act regarding certain children 17 years of age or younger who are testifying in specified judicial proceedings. In its main provisions, the bill:

- (1) Requires the court to ensure that the oath be given to a child in a manner that the child may fully understand his or her duty to tell the truth, that questions are stated in a form which is appropriate for the age of the child, and that questions are explained to the child, if necessary, in order for him or her to understand;
- (2) Allows the court, at its discretion, to limit in duration or limit to normal school hours the taking of testimony of the child;
- (3) Allows the child when testifying to have a comfort item, such as a toy, blanket, or similar item, upon a motion at least 30 days in advance of the judicial proceeding and if all parties agree or under specified court findings;
- (4) Allows the child to have a support person present and in close proximity during his or her testimony to provide emotional support, upon a motion at least 30 days in advance of the judicial proceeding and if all parties agree or under specified court findings. The support person must abide by the rules established by the court;
- (5) Requires the court to prevent intimidation or harassment of the child by the parties or their attorneys; and
- (6) Allows the court, upon its own motion or the motion of any party at least 30 days in advance of the judicial proceeding, to order comfortable accommodations for the child which can include adjusting the courtroom layout, conducting the proceedings outside of a courtroom, or relaxing the formalities of the proceedings. §491.725, RSMo

**HCS HB 914 DIRECTOR OF THE DIVISION OF FINANCE**

Removes a provision requiring the circuit court to approve the Director of Finance's appointment of the Federal Deposit Insurance Corporation as the liquidating agent for a failed bank. §361.340, RSMo

**HCR 5 MISSOURI CITIZENS' COMMISSION ON COMPENSATION**

Disapproves the Missouri Citizens' Commission on Compensation for Elected Officials salary recommendations.